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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

In re JOSEPH M. ARPAIO, in his official capacity as Sheriff of Maricopa County, Arizona, and GERARD A. SHERIDAN,

No. 15-72440  
United States District Court  
District of Arizona  
No. CV 07-02513-PHX-GMS

Defendants/Petitioners,

## **MOTION TO STAY DISTRICT COURT PROCEEDINGS**

### Specially appearing non-party/Petitioner,

UNITED STATES DISTRICT COURT for  
the District of Arizona.

Respondent Court,  
and  
**MANUEL de JESUS ORTEGA  
MELENDRES, et al.,**  
Plaintiffs/Real Parties in Interest.

Petitioners Sheriff Joseph M. Arpaio and Chief Deputy Gerard Sheridan respectfully request this Court to stay all proceedings in the district court pending the outcome of their Writ of Mandamus which requests the recusal or disqualification of Judge G. Murray Snow.

## I. INTRODUCTION

On July 10, 2015, the Court denied Petitioners' Motion for Disqualification and/or Recusal ("Motion for Recusal") of Judge G. Murray Snow. [Doc. 1164, Ex. 1.] The primary focus of the Motion for Recusal was the spontaneous injection of two MCSO internal investigations entirely unrelated to the three defined areas of the contempt proceedings, the Court's independent investigation of these issues, and any other issues, through its Monitor, and Judge Snow's failure to recuse himself in light of his brother-in-law's partnership with Covington & Burling. [See Docs. 1150, Ex. 2; 1158, Ex. 3.]

The Court subsequently entered an Order setting several pre-hearing deadlines for the continued contempt proceedings, including deadlines for submitting schedules for the completion of outstanding internal investigations, document production requests, and other discovery. [See Docs. 1179, Ex. 4; 1208, Ex. 5.] The Court has also set hearing dates for the resumption of the contempt proceedings, beginning on September 22, 2015. [Doc. 1208, Ex. 5.] Petitioners have already requested that the district court stay the proceedings in anticipation of filing their Writ of Mandamus, [See Docs. 1172, Ex. 6; 1176, Ex. 7], which the Court denied. [Doc. 1179, Ex. 4.] On August 3, 2015, Petitioners filed their Writ

1 of Mandamus requesting that the Ninth Circuit order Judge Snow's disqualification  
 2 from this action.

3 Because Petitioners need the opportunity to see an appellate ruling on the  
 4 issue of recusal of Judge Snow before the contempt proceedings resume, Petitioners  
 5 respectfully request a stay of all trial court proceedings.

6 **II. A STAY IS WARRANTED UNDER THE NKEN FACTORS**

7 Pursuant to Fed. R. App. P. 8(a)(1), a party must ordinarily move first in the  
 8 district court for a stay of a district court order pending appeal. Petitioners have  
 9 already moved for a stay by the district court; the district court denied that motion.  
 10 [See Docs. 1172, Ex. 6; 1176, Ex. 7; 1179, Ex. 4]. In addition, Petitioners must  
 11 also include the reasons for granting the relief requested. Fed. R. App. P. (8)(b)(i).  
 12 Pursuant to *Nken v. Holder*, 556 U.S. 418, 434 (2009), Petitioners are entitled to the  
 13 relief requested.

14 In *Nken*, the Supreme Court noted that four factors are considered in  
 15 determining whether a stay pending appeal is required:

16 (1) whether the stay applicant has made a strong showing  
 17 that he is likely to succeed on the merits; (2) whether the  
 18 applicant will be irreparably injured absent a stay; (3)  
 19 whether issuance of the stay will substantially injure the  
 other parties interested in the proceeding; and (4) where  
 the public interest lies.

20 556 U.S. at 434; *see also Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983).  
 Pursuant to the *Nken* four factor test, a stay is warranted in this action pending the  
 outcome of Petitioners' Writ of Mandamus.

22 **A. Petitioners are likely to succeed on the merits.**

23 Importantly, to justify a stay "petitioners need not demonstrate that it is more  
 24 likely than not that they will win on the merits." *Leiva-Perez v. Holder*, 640 F.3d  
 25 962, 966 (9th Cir. 2011). The court in *Leiva-Perez* recognized that "[t]here are  
 26 many ways to articulate the minimum quantum of likely success necessary to  
 27 justify a stay—be it a 'reasonable probability' or 'fair prospect,' . . . 'a substantial  
 28

1 case on the merits,’ . . . or, . . . that ‘serious legal questions are raised.’” *Leiva-*  
 2 *Perez*, 640 F.3d at 967-68. “Regardless of how one expresses the requirement, the  
 3 idea is that in order to justify a stay, a petitioner must show, at a minimum, that she  
 4 has a substantial case for relief on the merits.” *Id.* at 968.

5 The arguments raised in Petitioners’ Writ of Mandamus demonstrate a  
 6 substantial case for relief on the merits because it satisfies the standard set forth in  
 7 *Bauman v. United States District Court*, 557 F.2d 650 (9th Cir. 1977). The Ninth  
 8 Circuit has also clarified that when “a district court has erred in deciding a question  
 9 of law, we may hold that the district court’s ruling is ‘clearly erroneous as a matter  
 10 of law as that term is used in mandamus analysis,’” under the *Bauman* test. *In re*  
 11 *Cement*, 688 F.2d at 1306-07 (citing *Bauman*, 557 F.2d at 660); *see also Calderon*  
 12 *v. United States Dist. Ct.*, 98 F.3d 1102, 1105 (9th Cir. 1996) (A petitioner need not  
 13 satisfy all five *Bauman* factors, rather, the third factor, a determination that the  
 14 lower court’s decision is clearly erroneous, is dispositive.). For the following  
 15 reasons, Petitioners have a “substantial case for relief on the merits” because Judge  
 16 Snow’s failure to recuse himself under his July 10, 2015 Order is clearly erroneous  
 17 as a matter of law. *Leiva-Perez*, 640 F.3d at 968.

18                   **1. Judge Snow and his spouse are material witnesses in this**  
 19 **action.**

20                   Under 28 U.S.C. § 455(b)(5)(iv), a judge shall disqualify himself if he or his  
 21 spouse is likely to be a material witness in the proceeding. Nothing in Judge  
 22 Snow’s July 10, 2015 Order addressed the *uncontradicted evidence* in the record  
 23 that alleges Judge Snow is biased toward Defendant Arpaio. [See Doc. 1117 (Exs.  
 24 5-8), Ex. 8]. The facts of the record, therefore, go well beyond an “unsubstantiated  
 25 suggestion of personal bias or prejudice.” [Doc. 1164 at 34:10-11, Ex. 1.] Rather,  
 26 no reasonable person with knowledge of the facts can deny that Judge Snow is now  
 27 investigating and presiding over issues involving his own family, which is  
 28

expressly forbidden by 28 U.S.C. § 455(b)(5).<sup>1</sup> See *United States v. Alabama*, 828 F.2d 1532, 1545 (11th Cir. 1987) (disqualification required when the judge was “forced to make factual findings about events in which he was an active participant.”). Moreover, Judge Snow’s attempt to ignore the uncontradicted record by relying on former counsel is improper. The analysis and comments stated by former counsel are now stale in light of Judge Snow injecting the Grissom issue into the OSC hearing, which the Petitioners have always maintained was the basis for their Motion for Recusal. Judge Snow’s refusal to recuse himself pursuant to 28 U.S.C. § 455(b)(5)(iv) is, therefore, clearly erroneous as a matter of law.

2. Expansion of the Monitor's powers and authority was in contravention of Ninth Circuit's previous order, Petitioners' Due Process Rights, and § 455(a) and (b).

The Court’s surprise inquiry into the Grissom/Montgomery investigations also deprived Sheriff Arpaio of his due process constitutional rights. At a minimum, a Court must provide an alleged contemnor with notice and an opportunity to be heard. *Int’l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 827 (1994). The concept of notice includes prior disclosure and provision of documents to be used at trial, and prior identification of areas of examination. *See generally, Stuart v. United States*, 813 F.2d 243, 251 (9th Cir.1987), rev’d on other grounds, 489 U.S. 353 (1989); *DP Aviation v. Smiths Indus. Aerospace & Def. Sys. Ltd.*, 268 F.3d 829, 846-47 (9th Cir. 2001). Such advance notice is consistent with an alleged contemnor’s right to present a defense. *See United States v. Powers*, 629 F.2d 619, 625 (9th Cir. 1980). Further, the law requires progressively greater procedural protections for indirect contempts of complex injunctions that necessitate more elaborate and in-depth fact finding, as in this case. *See Bagwell*, 512 U.S. 821 at 833-34.

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<sup>1</sup> Indeed, Judge Snow's Order explicitly states that he will continue to investigate into MCSO's remaining internal investigations. [Doc. 1164 at 40:11-12, Ex. 1.]

1        During the OSC hearing, neither the Court nor any other party gave notice  
 2 that Defendant Arpaio would be questioned regarding a *Phoenix New Times* article  
 3 detailing the Grissom/Montgomery investigations or that it would be at all relevant  
 4 to the contempt proceedings. The blog was not identified as an exhibit. Moreover,  
 5 Judge Snow subsequently directed his Monitor to investigate further into these  
 6 irrelevant matters. [Doc. 1117-1 (Ex. 9), Ex. 9., 5/14/15 Transcript at 49:15-21, 51,  
 7 Ex. 10]. Over Petitioners' objections, Judge Snow ruled that his Monitor would not  
 8 be "shackled" by Petitioners' constitutional rights.<sup>2</sup> [Id. at 56, Ex. 10]. In contempt  
 9 proceedings, procedural protections such as prior notice are crucial "in view of the  
 10 heightened potential for abuse posed by the contempt power." *Taylor v. Hayes*, 418  
 11 U.S. 488, 498 (1974). The failure to abide by these fundamental and basic  
 12 constitutional requirements further demonstrates Judge Snow's bias under § 455(a)  
 13 and (b), which requires his disqualification and recusal.

14                    **3. Judge Snow improperly engaged (and continues to engage)  
 15                    in an extrajudicial investigation of disputed facts.**

16        Under 28 U.S.C. § 455(b)(1), a judge shall disqualify himself "[w]here he  
 17 has a personal bias or prejudice concerning a party, or personal knowledge of  
 18 disputed evidentiary facts concerning the proceeding." Those facts exist here.  
 19 Judge Snow's July 10, 2015 Order confirms that he engaged in personal  
 20 communication with his Monitor regarding matters he thought relevant to the OSC  
 21 hearing and which he infused into the proceeding. [See Doc. 1164 at 20:5-12, Ex.  
 22 1]. Specifically, during the lunch of the OSC hearing Judge Snow spoke with the  
 23 Monitor and received new information regarding matters directly related to, and at

24                    <sup>2</sup> Indeed, the Monitor's investigation involving the Grissom/Montgomery  
 25 issues, raised solely by Judge Snow during the contempt proceedings, is now fully  
 26 underway. The Monitor and his team have conducted interviews of MCSO  
 27 personnel, including those who are alleged civil contemnors. The topics of these  
 28 interviews almost exclusively focused on MCSO's internal investigations,  
 including the investigation involving Dennis Montgomery, what MCSO paid him to  
 do, and whether he was investigating Judge Snow. [See 7/31/15 RT at 31:19-32:1,  
 42:22-43:2, attached as Ex. 13.]

1 issue in, the OSC hearing. *[Id.]* This *ex parte* communication is in clear violation  
 2 of § 455(b)(1) and, at the very least, creates the appearance of impartiality, making  
 3 recusal mandatory.<sup>3</sup> *See SCA Servs., Inc. v. Morgan*, 557 F.2d 110, 116 (7th Cir.  
 4 1977) (“the judge's ‘Memorandum of Decision’ suggests that he made a  
 5 confidential inquiry, presumably to his brother, to determine in what capacity  
 6 Donald A. Morgan was involved in this case. Counsel were not present and were  
 7 unaware of the inquiry at the time it was made. While it is understandable why the  
 8 judge may have felt his brother could present the most accurate evidence as to his  
 9 role in the pending litigation, the judge's inquiry creates an impression of private  
 10 consultation and appearance of partiality which does not reassure a public already  
 11 skeptical of lawyers and the legal system.”). Judge Snow's failure to recuse himself  
 12 based on these issues was, therefore, clearly erroneous as a matter of law.<sup>4</sup>

13                   **4. Recusal was mandatory because Judge Snow's brother-in-  
 14 law was a partner in Covington & Burling.**

15                   Judge Snow's brother-in-law has an interest that could be “substantially  
 16 affected by the outcome of the proceeding” but Judge Snow nevertheless engaged  
 17 in a waiver analysis to determine whether he should recuse himself. *See* 28 U.S.C.  
 18 § 455(b)(5)(iii). While the Court believes this is a waivable conflict, Petitioners do

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19                   <sup>3</sup> Sheriff Arpaio's subsequent testimony confirming what the Monitor told  
 20 Judge Snow during their *ex parte* communication does not save Judge Snow from  
 21 the appearance of impropriety. The fact of the matter is that there was still an *ex*  
 22 *parte* communication involving disputed facts during the OSC hearing, which is in  
 23 clear violation of § 455(a) and (b)(1).

24                   <sup>4</sup> The Court's extrajudicial investigation of disputed evidentiary facts through  
 25 the Monitor continues to prejudice Defendants. In the Court's August 7, 2015  
 26 status conference, Judge Snow revealed that he continues to communicate, *ex parte*,  
 27 with the Monitor and members of his team regarding ongoing interviews of the  
 28 civil contemnors [*See* 8/7/15 RT at 16:15-18:15, Ex. 14], which involve the very  
 29 issues now being raised on appeal (i.e., the MCSO internal investigations involving  
 30 Dennis Montgomery and Karen Grissom). [8/11/15 RT at 52:14-16, Ex. 15] These  
 31 apparently occurred prior to and just before the 8/7/15 status conference. [8/7/15  
 32 RT at 16:15-21, Ex. 14] Similarly, in the August 11, 2015 status conference, the  
 33 Court continually referenced its communications regarding the Monitor's  
 34 investigation into MCSO. [*See* 8/11/15 RT at 24:17-22, 51:22-52:3, 53:5-10,  
 35 attached as Ex. 15].

1 not. *See* 28 U.S.C. § 455(e); Judicial Ethics Advisory Opinion No. 58 (holding that  
 2 there is a categorical rule of recusal when a relative within the third degree of  
 3 relationship of a judge has an equity interest in a law firm in a case before that  
 4 judge); *Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1113 (5th Cir. 1980)  
 5 (quoting 28 U.S.C. § 455(b)(5)(iii)) (holding that “when a partner in a law firm is  
 6 related to a judge within the third degree, that partner will always be ‘known by the  
 7 judge to have an interest that could be substantially affected by the outcome’ of a  
 8 proceeding involving the partner’s firm.”); *id.* (concluding that a *per se* rule  
 9 requiring recusal “will serve to promote public confidence in the integrity and  
 10 impartiality of the judiciary in general and of the participating judge in particular”).  
 11 Regardless, on the eve of trial, Judge Snow permitted Petitioners to waive an  
 12 unwaivable conflict. [Doc. 541, Ex. 11]. “The express language of section 455(e)  
 13 dictates that a judge cannot accept a waiver of disqualification on section  
 14 455(b)(5)(iii) grounds, such as when a relative of the judge has an interest which  
 15 could be affected by the outcome of the proceeding.” *Potashnick*, 609 F.2d at  
 16 1115. Moreover, Judge Snow’s Order effectively used Sheriff Arpaio’s prior  
 17 waiver of this issue against all of the alleged contemnors in this action, *including*  
 18 *those who were not a part of the prior proceedings*. [See Doc. 1164 at 35-36, Ex.  
 19 1.]<sup>5</sup> Judge Snow’s failure to recuse himself and permitting counsel to waive an  
 20 unwaivable issue was, therefore, clearly erroneous as a matter of law.<sup>6</sup>

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22 <sup>5</sup> In fact, Chief Deputy Sheridan neither waived, nor was provided the  
 23 opportunity to waive, this conflict. In addition, the Court did not provide any other  
 24 alleged contemnor the opportunity to waive what it deems to be a waivable conflict,  
 either.

25 <sup>6</sup> Regardless of the Courts’ concerns regarding timeliness, consideration of  
 26 the merits of Petitioners arguments is favored due to the Courts’ “unwavering  
 27 commitment to the perception of fairness in the judicial process.” [Doc. 138 at  
 28 13:3-6, Ex. 12]; *see also Bradley v. Milliken*, 426 F.Supp. 929, 931 (E.D. Mich.  
 1977) (despite a motion for recusal being untimely, because 28 U.S.C. § 455 places  
 a duty of disqualification squarely upon the presiding judge, if plaintiffs’ “asserted  
 grounds for recusal [were true], [the judge] could not sit on the case regardless of  
 any implied waiver or untimeliness of motion.”).

5. An objective independent observer would have found recusal necessary under 28 U.S.C. § 455(a).

Finally, the Court impermissibly relied on statements made by Sheriff Arpaio, Chief Deputy Sheridan, and former counsel to make the determination that a reasonable person in light of all the facts would not believe that Judge Snow should recuse himself under 28 U.S.C. § 455(a). [See e.g., Doc. 1164 at 26-27, 31, Ex. 1]. However, none of these individuals were apprised of the full breadth of facts, nor are their opinions proper proxies, sufficient to make a determination that recusal is not required under § 455(a). Specifically, for counsel's opinion regarding recusal in the Grissom investigation could not have taken into account Judge Snow's unexpected injection of the issues into the OSC hearing. Similarly, Sheriff Arpaio and Chief Deputy Sheridan's opinions regarding the Montgomery investigation also failed to take into account the Court's raising of the issue during the OSC hearing. An objective independent observer would have found recusal necessary under § 455(a). Judge Snow's reliance on the opinions of Sheriff Arpaio, Chief Deputy Sheridan, and former counsel as a substitute for what an objective independent observer would believe under §455(a) was, therefore, clearly erroneous as a matter of law.

In addition, in light of all of the aforementioned errors, a reasonably objective observer would believe that recusal was necessary under 28 U.S.C. § 455(a). *Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1991) (“The relevant test for recusal under § 455(a) is whether “a reasonable person would have a reasonable basis for questioning the judge’s impartiality, not whether the judge is in fact impartial.”); *see also In re Mason*, 916 F.2d 384, 386 (7th Cir. 1990) (an independent outside observer is “less inclined to credit judges’ impartiality and mental discipline than the judiciary....”); *In re Faulkner*, 856 F.2d 716, 721 (5th Cir. 1998) (“[p]eople who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.”); *United States v.*

1 *Holland*, 519 F.3d 909, 911 (9th Cir. 2008) (quoting *United States v. Dandy*, 998  
 2 F.2d 1344, 1349 (6th Cir. 1993) (instructing that when a case is close, the balance  
 3 should tip in favor of recusal). Judge Snow's failure to find that a reasonably  
 4 objective observer would believe that recusal was necessary under 28 U.S.C. §  
 5 455(a) was clearly erroneous as a matter of law.<sup>7</sup>

6 **6. Petitioners' Motion for Recusal was Timely.**

7 Judge Snow's Order repeatedly asserts that the Recusal Motion was  
 8 untimely. [Doc. 1164 at 2, 27, 32, and 33, Ex. 1.] A motion for recusal under §  
 9 455(a) does not have a strict timeliness requirement. *U.S. v. Kehlbeck*, 766 F.Supp.  
 10 707 (S.D. Ind. 1990); *see also Conforte*, 624 F.2d at 880 (“we leave open here the  
 11 question whether timeliness may be disregarded in exceptional circumstances.”).  
 12 Petitioners never argued that the grounds for recusal arose out of the  
 13 Grissom/Montgomery investigations themselves, but that it was this Court’s  
 14 improper inquiry into these matters during an OSC hearing with three clearly  
 15 defined topics, none of which included the Grissom/Montgomery investigations,  
 16 which made these investigations purportedly relevant to the proceedings.

17 In *Edgar v. K.L.*, 93 F.3d 256, 257-58 (7th Cir. 1996), the Seventh Circuit  
 18 concluded that a request for recusal was timely despite the fact that defendants had  
 19 known for at least a year that experts had met from time to time with the judge  
 20 because “[n]ot until two weeks before seeking disqualification did the defendants  
 21 learn—by acquiring a detailed agenda prepared by one of the panel members—that  
 22 at least one meeting had covered the merits of the case, rather than casual chitchat  
 23 and details such as reimbursement of expenses.” Like in *Edgar*, the Recusal  
 24 Motion was timely filed because the grounds for recusal did not arise until, at the  
 25 earliest, April 23, 2015 (when the Court questioned Sheriff Arpaio during the OSC  
 26

27 \_\_\_\_\_  
 28 <sup>7</sup> For a full discussion of all the facts supporting why a reasonably objective  
 observer would believe that recusal is necessary under 28 U.S.C. § 455(a), *see*  
 Petitioners’ Writ of Mandamus at pp. 32-34. [Dkt. 1].

1 hearing). Moreover, Judge Snow's subsequent Orders, directing that his monitor be  
 2 given unfettered access to investigate these irrelevant matters did not occur until  
 3 May 14, 2015. Accordingly, the Recusal Motion was filed within ***one month*** after  
 4 Judge Snow's injection of the Grissom/Montgomery investigation into the OSC  
 5 proceeding, and within a ***week*** of his subsequent Order expanding his monitor's  
 6 authority to investigate into these irrelevant subjects. The Recusal Motion was,  
 7 therefore, timely. Judge Snow's failure to consider the merits of Petitioners'  
 8 Recusal Motion based on timeliness was, therefore, clearly erroneous.

9                   **B. Petitioners will be irreparably injured absent a stay.**

10               Clearly, a biased judge presiding over civil contempt proceedings and  
 11 overseeing compliance efforts will irreparably injure the Petitioners. Because  
 12 Judge Snow also has the ability to recommend criminal contempt proceedings,  
 13 Petitioners face even greater harm from Judge Snow presiding over this action, if in  
 14 fact, recusal is required under 28 U.S.C. § 455.

15               Moreover, a stay is necessary because the resumption of the contempt  
 16 proceedings will begin on September 22, 2015, with continuing deadlines for  
 17 discovery related to those proceedings occurring in the interim. The Court has  
 18 clearly instructed the Monitor to investigate into the Grissom/Montgomery and  
 19 MCSO internal investigations that have nothing to do with the three defined areas  
 20 of the civil contempt proceedings. This is not even disputed by Judge Snow. [See  
 21 7/24/15 Tr. at 21:6-10, attached as Ex. 16; 7/31/15 RT at 44:16-21 (emphasis  
 22 added), Ex. 13.] Despite this recognition, the Court somehow believes MCSO  
 23 internal investigations should be considered during the civil contempt proceedings  
 24 due to some nebulous connection with "the need and necessity and the extent of the  
 25 remedy required that may be sought by the plaintiff class for materials and other  
 26 matters that were not provided by the Maricopa County Sheriff's Office prior to  
 27 trial in this matter...." [Id. at 45:2-10.]

28               Even the Court cannot square its reasoning for inquiry into these matters.

1 [Compare *id.* at 45:2-4 (“It also seems to me that these matters, even though they  
 2 cannot and should not, in and of themselves, be the subject of civil contempt, are  
 3 relevant to the civil contempt hearing”) with *id.* at 45:11-14 (“I’m not going to  
 4 adjust these civil contempt hearings to incorporate those matters which I believe  
 5 may have been but I do not know were direct violations of my order, but I’m not  
 6 going to view them necessarily as irrelevant.”).] Thus, Petitioners are in the  
 7 position of limbo. According to the Court, on the one hand, MCSO internal  
 8 investigations are not a part of the contempt proceedings, but on the other, the  
 9 Court is “not going to find them irrelevant to the present civil contempt hearing”  
 10 and that they may be “the subject of a future criminal contempt hearing” if Judge  
 11 Snow determines that “civil contempt proceedings cannot serve the purposes that  
 12 are required by the nature of the contempt itself.” [*Id.* at 45:11-24.] Absent a stay  
 13 of all proceedings to determine if the Court is improperly investigating into these  
 14 admittedly irrelevant matters during these contempt proceedings, Petitioners are,  
 15 and will continue to be, irreparably harmed.

16 **C. Issuance of the stay will not substantially injure the other parties  
 17 interested in the proceeding.**

18 Mandamus actions are given preference over ordinary civil cases in the Ninth  
 19 Circuit. *See* Fed. R. App. P., Rule 21. Accordingly, Petitioners do not expect the  
 20 need for a lengthy stay. Moreover, because this action has already been resolved  
 21 and is in the compliance phase of the proceedings, there is little danger for the stay  
 22 to materially prejudice the parties’ interests. As the Court has already noted, in a  
 23 civil contempt proceeding, it is “the offended judge [who is] solely responsible for  
 24 identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct.”  
*25 Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994).  
 26 The other parties, therefore, have little interest in the ongoing contempt  
 27 proceedings, and such minimal interest is not substantially injured given the short  
 28 expected length of the stay requested by Petitioners.

1                   **D. The public's interest favors a stay.**

2                   The right to a neutral and detached judge in any proceeding is protected by  
3 the Constitution and is an integral part of maintaining the public's confidence in the  
4 judicial system. *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 (1972). Judges  
5 must, therefore, adhere to high standards of conduct to preserve the integrity of the  
6 judiciary, and to ensure that justice is carried out in each individual case. *York v.*  
7 *United States*, 785 A.2d 651, 655 (D.C. 2001). Accordingly, the public interest  
8 greatly favors a stay of this litigation to ensure that the appearance of an impartial  
9 judiciary is preserved.

10                  **III. CONCLUSION**

11                  Petitioners are entitled to have the trial court's denial of the Motion for  
12 Recusal reviewed on appeal before they are subjected to further contempt  
13 proceedings. Judge Snow's failure to recuse himself was erroneous as a matter of  
14 law. Intervention by this Court through a stay is needed to prevent irreparable harm  
15 to Petitioners, the public's perception of an impartial judiciary, and to receive  
16 guidance from this Court on whether a different Judge should be assigned to  
17 oversee further contempt proceedings and ongoing compliance efforts. Petitioners,  
18 therefore, request a stay of the district court proceedings pending this appeal.

1 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of August, 2015.  
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4 JONES, SKELTON & HOCHULI, P.L.C.  
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7 By /s/ John T. Masterson  
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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing MOTION TO STAY DISTRICT COURT PROCEEDINGS with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on the 20<sup>th</sup> day of August, 2015.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/Karen Gawel